

## **EXHIBIT X**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al., )  
Plaintiffs, )  
v. ) Civil Action No.  
THE PALESTINE LIBERATION ) 04cv397 (GBD) (RLE)  
ORGANIZATION, et al., )  
Defendants. )  
\_\_\_\_\_  
)

DEPOSITION OF MICHAEL SFARD

JERUSALEM, ISRAEL

OCTOBER 24, 2013

REPORTED BY: BRENDA MATZOV, CA CSR NO. 9243

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| <p>1 should digest the notion of public hearing. And I<br/> 2 think they -- they didn't at least at the<br/> 3 time frame that is relevant to our discussion here.<br/> 4 Q. Do you -- do you think there's a difference<br/> 5 between the -- well, let me ask you this.</p> <p>6 As I understand it, the military courts that<br/> 7 we've been discussing have jurisdiction over a wide<br/> 8 variety of kinds of offenses; is that true?</p> <p>9 A. That's true.</p> <p>10 Q. Things ranging from traffic violations on<br/> 11 the one hand, perhaps one end of the spectrum, speeding<br/> 12 tickets, to -- to acts of terrorism at the other end?</p> <p>13 Is that fair to say?</p> <p>14 A. That's true.</p> <p>15 Q. Okay. So -- and -- and the 21 cases we're<br/> 16 dealing with were all terrorism cases; right?</p> <p>17 A. Right.</p> <p>18 Q. So do you have a view on -- are you able<br/> 19 to compare security precautions taken for public<br/> 20 access in terrorism cases in the military courts<br/> 21 versus terrorism cases in the civilian courts, of<br/> 22 which the Marwan Barghouti --</p> <p>23 A. Is one.</p> <p>24 Q. -- seems to be the archetypical example?</p> <p>25 A. I don't have a knowledge and expertise in</p> | <p>1 minutes.</p> <p>2 Q. Now, does -- as counsel for the defense,<br/> 3 were you provided with those summary records during<br/> 4 the course of the cases that you've handled?</p> <p>5 A. Yes, I have.</p> <p>6 Q. And do defense counsel have the opportunity<br/> 7 to object if they feel that the record is inaccurate<br/> 8 or incomplete?</p> <p>9 A. They do.</p> <p>10 Q. Now -- and is that -- is the fact of the<br/> 11 objection recorded in the record of the case?</p> <p>12 A. It should.</p> <p>13 Q. Now, the defendant may request the court<br/> 14 to summon witnesses for the defense; right?</p> <p>15 A. Right.</p> <p>16 Q. And the -- the court can hold witnesses<br/> 17 in contempt if they fail to obey the summons; right?</p> <p>18 A. That's true.</p> <p>19 Q. And the defense has the right to examine,<br/> 20 cross-examine, and re-examine witnesses; right?</p> <p>21 A. It has the right. It doesn't -- it doesn't<br/> 22 mean that they have the opportunity always to do that.</p> <p>23 Q. The -- the right is subject to the control<br/> 24 of the court?</p> <p>25 A. That is -- that is correct.</p>   |
| Page 75   | Page 77  |
| <p>1 this.</p> <p>2 Q. Fair enough. Okay.</p> <p>3 Now, in the military courts that we've been<br/> 4 discussing, the accused is entitled to a translator;<br/> 5 is that right?</p> <p>6 A. The accused is entitled to an interpreter --</p> <p>7 interpreter.</p> <p>8 Q. Interpreter.</p> <p>9 And -- and the accused has a right to object<br/> 10 to a particular interpreter; isn't that right?</p> <p>11 A. That's right.</p> <p>12 Q. Now, in the military courts that we've been<br/> 13 discussing, a summary record of the trial is made rather<br/> 14 than a verbatim transcript; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And the summary record must be signed by the<br/> 17 president of the court; is that right?</p> <p>18 A. By the -- yeah.</p> <p>19 Q. And, commonly, the summary record is actually<br/> 20 signed by all three judges?</p> <p>21 Have you seen that?</p> <p>22 A. No, I haven't. But there is usually, at<br/> 23 the end of each hearing, a decision made by the --</p> <p>24 by the judges, and the decision is signed by all three.</p> <p>25 But that's not a confirmation of -- of the summary</p>  | <p>1 Q. And that's true in our courts in New York<br/> 2 as well.</p> <p>3 A. Well, the question is: What are the<br/> 4 evidentiary ramifications of not being able to use<br/> 5 your right to cross-examine?</p> <p>6 I mean, it's true that no judge in the<br/> 7 world can compel a person to testify if he decided<br/> 8 that he will not say a word, if we're taking torture<br/> 9 out of the equation. But the question --</p> <p>10 Q. I think you would agree with me it would<br/> 11 be inconsistent with the judicial mission for a --<br/> 12 for a judge to torture a witness?</p> <p>13 A. I -- I agree. Of course.</p> <p>14 But the question is: What happens if the<br/> 15 defense did not have the opportunity to cross-examine<br/> 16 the witness? Will his out-of-court statement be<br/> 17 admitted to the truth or not? And that -- that is<br/> 18 a serious question which I deal with in my report.</p> <p>19 Q. Have the -- have the courts, either the<br/> 20 Military Court of Appeals or the Israel Supreme Court<br/> 21 dealt with that issue?</p> <p>22 A. It has.</p> <p>23 Q. And what have they said about that?</p> <p>24 A. The rules that govern are -- that govern now,<br/> 25 after a long evolution, is -- jurisprudential evolution,</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 Q. -- I'm being imprecise, and you're --<br/>   2 you're being more precise by talking about somebody<br/>   3 who translates written documents?</p> <p>4 A. That's what I mean by "translation."</p> <p>5 Q. That's the distinction that you're making?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. So I'll try to go with your lingo.</p> <p>8 A. Okay.</p> <p>9 Q. And -- and so if -- if there -- whatever<br/>   10 proceedings there are in the -- in the military court,<br/>   11 the interpreter is required to interpret them.</p> <p>12 And is the -- is the interpreter sworn to<br/>   13 interpret to the best of his or her ability?</p> <p>14 A. I don't remember if they're sworn. I don't<br/>   15 think -- there is no swearing in general. They're --<br/>   16 they're --</p> <p>17 Q. Affirming?</p> <p>18 A. -- affirming.</p> <p>19 Q. Yeah.</p> <p>20 A. Yeah. I don't -- I don't recall seeing<br/>   21 a interpreter sworn in a case. They might be sworn<br/>   22 in general -- I don't know -- or affirmed.</p> <p>23 But in any event, they are supposed to<br/>   24 interpret to Hebrew Arabic and to Arabic Hebrew.<br/>   25 And as -- as mentioned in the -- in my report, in</p> | <p style="text-align: right;">Page 88</p> <p>1 "bravo."</p> <p>2 A. 21(b). Yeah, you are right.</p> <p>3 Q. Okay.</p> <p>4 A. It says that the court will read out the<br/>   5 charge sheet.</p> <p>6 Q. And -- and when you say it's the practice<br/>   7 not to do that, you understand that that's a strategic<br/>   8 decision or a -- a trial judgment that the counsel<br/>   9 are making or that the witness -- that the accused<br/>   10 is making; right?</p> <p>11 A. Okay. My answer to you on this is the<br/>   12 following. Being a defense attorney in the military<br/>   13 courts, you get accustomed -- you're -- you're joining<br/>   14 a culture in which there are many practices that deviate<br/>   15 from the letter of the law, like this one. And it<br/>   16 is exactly the kind of failures that -- to uphold due<br/>   17 process rights to their letter that it was me -- I was<br/>   18 very much afraid to get accustomed to.</p> <p>19 Yes, you're right, a defense attorney should<br/>   20 object to the idea that a judge would not read out the<br/>   21 charge sheet and instead let him, definitely if he is<br/>   22 not a master in Hebrew, interpret the charge sheet to<br/>   23 the defendant. Yes, in most cases, the defense<br/>   24 attorneys cooperate with that practice.</p> <p>25 Q. So when you were with Avigdor Feldman, did</p> |
| <p style="text-align: right;">Page 87</p> <p>1 the Yesh Din report, those interpreters are not<br/>   2 professional interpreters. They are young Druze<br/>   3 or Bedouins whose only quality for interpretation<br/>   4 is that they are native Arabic speakers.</p> <p>5 Q. Do you -- do you have any statistics on<br/>   6 how frequently the -- the interpreters are objected<br/>   7 to in the military courts?</p> <p>8 A. No, I do not.</p> <p>9 Q. Do you know whether, in any of our 21 cases,<br/>   10 the interpreter --</p> <p>11 A. I haven't --</p> <p>12 Q. -- was objected to?</p> <p>13 A. I haven't seen any objection in those 21<br/>   14 cases.</p> <p>15 Q. So coming back to the charge sheet, do we<br/>   16 agree that the Military Order 378 provides the accused<br/>   17 with a right to have the charge sheet read out?</p> <p>18 A. Can you point me to the article?</p> <p>19 Q. I was afraid you were going to say that.</p> <p>20 A. No, because I want to be very accurate --</p> <p>21 Q. Yeah, yeah.</p> <p>22 A. -- if it's the right to be read out or to<br/>   23 be handed.</p> <p>24 Q. Yeah. Let's -- let's see if I can find it.<br/>   25 It appears -- it appears in my version of 21(b) like</p>       | <p style="text-align: right;">Page 89</p> <p>1 he object to the -- or did he insist on the reading<br/>   2 out of the charge sheet?</p> <p>3 A. I don't recall that he did.</p> <p>4 Q. And you would agree with me that -- I can't<br/>   5 remember the exact -- you -- you made some critical<br/>   6 comment about being corrupted by the system or something<br/>   7 like that.</p> <p>8 You would agree with me he's not such a<br/>   9 person; right?</p> <p>10 A. I agree that he's not.</p> <p>11 Q. Thank you.</p> <p>12 Now, the court is required, before accepting<br/>   13 a guilty plea, to be satisfied that the accused fully<br/>   14 understands the nature of the charge brought against<br/>   15 him and the implications of his admission of guilt;<br/>   16 correct?</p> <p>17 A. Again, which -- yeah, I -- it sounds like<br/>   18 what is said in the order.</p> <p>19 Q. Every person tried in the military courts<br/>   20 is entitled to be present during the whole trial,<br/>   21 so long as he conducts himself properly; correct?</p> <p>22 A. Correct.</p> <p>23 Q. I think we spoke about this earlier. And I --<br/>   24 I didn't see it in 378. But as I understand -- well,<br/>   25 let me ask you this.</p>   |

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| <p style="text-align: right;">Page 110</p> <p>1 Q. That's not uncommon among lawyers that they<br/>2 see things differently but still respect each other.<br/>3 Is that your situation with Reisner?<br/>4 A. Yeah.<br/>5 Q. He mentioned in his report -- did I ask you<br/>6 if you read his report?<br/>7 A. Yes.<br/>8 Q. And you did?<br/>9 A. I did.<br/>10 Q. And he -- he mentioned that -- that the<br/>11 de minimis doctrine applies in the military courts.<br/>12 Do you agree with that?<br/>13 A. I don't. Mr. Reisner has made a report that<br/>14 is based on the law and case law. That is a -- that<br/>15 is a work that can be done by students and has nothing<br/>16 to do with practice.<br/>17 Q. Let me ask the question again. Well, let me<br/>18 ask it a little differently, then, because I -- I don't<br/>19 want to -- I really don't want to debate with you about<br/>20 Mr. Reisner's report.<br/>21 A. Okay.<br/>22 Q. There's a -- there's a doctrine called the<br/>23 de minimis doctrine.<br/>24 Do you know what that is?<br/>25 A. I do.</p>   | <p style="text-align: right;">Page 112</p> <p>1 yesterday, I didn't get it. So it might --<br/>2 Q. You mean until today, even sitting here today,<br/>3 you haven't seen it?<br/>4 A. No, I haven't seen it.<br/>5 Q. I just wanted to make that clear, because<br/>6 you said "until yesterday."<br/>7 A. No, no, no.<br/>8 Q. But you haven't actually seen it?<br/>9 A. No, no, I haven't seen it.<br/>10 Q. Okay. It must be an idiom.<br/>11 A. Yeah.<br/>12 Q. All right. Abusive process, that's a defense<br/>13 that applies in the military courts as well; is that<br/>14 right?<br/>15 A. I understand -- I know that it is.<br/>16 Q. And there's a -- a rule that mentally unfit<br/>17 defendants may not be held criminally liable in the<br/>18 military courts; is that right?<br/>19 A. I believe that this is -- this applies in<br/>20 the military courts.<br/>21 Q. I -- I think we've established this, but<br/>22 just so I'm 100 percent sure, there is a right to<br/>23 appeal every final judgment in the military courts?<br/>24 A. Yes.<br/>25 Q. And if -- if a defendant pleads guilty and</p>   |
| <p style="text-align: right;">Page 111</p> <p>1 Q. What is it?<br/>2 A. It's a doctrine which states that if -- that,<br/>3 for certain very minor issues, the court would not deal<br/>4 with, and so it will cancel or acquit defendants.<br/>5 Q. That applies in the military courts?<br/>6 A. I read for the first time, in Reisner's<br/>7 report, that there was such a judgment.<br/>8 Since judgments of the military courts are<br/>9 not disseminated, I couldn't check it. And since we<br/>10 didn't get -- I didn't get -- I asked for the -- for<br/>11 the judgments to be supplied, because there is no way<br/>12 for me to get these judgments. They were not cited<br/>13 with any publication that I can go to a library and --<br/>14 and look for it. So I did not have the opportunity<br/>15 to go through, so I cannot -- I cannot say.<br/>16 Q. Did you try?<br/>17 A. How?<br/>18 Q. Did you go to a library? Did you go to the --<br/>19 A. No. The military courts' cases -- military<br/>20 courts' cases of first instance are not published.<br/>21 Military court cases of the Court of Appeals, only<br/>22 a selection of them is being published. And since<br/>23 Mr. Reisner, in his report, did not cite publication --<br/>24 the publication, I didn't try to -- to look for them.<br/>25 I asked for them to be handed over. And until</p> | <p style="text-align: right;">Page 113</p> <p>1 is unhappy with the sentence that's handed down, the<br/>2 defendant can appeal just the sentence; is that right?<br/>3 A. That's right.<br/>4 Q. And the defendant can agree on certain<br/>5 facts and -- and argue that, even though the facts<br/>6 are stipulated, for -- for various legal reasons,<br/>7 he should be acquitted; right?<br/>8 A. Right.<br/>9 Q. And -- and can the defendant plead guilty<br/>10 and then appeal on the basis of some agreed issue<br/>11 that has been resolved adverse to him?<br/>12 A. Sorry. Can you repeat that?<br/>13 Q. Sure. I mean, sometimes situations arise<br/>14 where -- where there's a -- oh, I don't know -- a<br/>15 very important piece of evidence that -- that the<br/>16 witness asks be suppressed, for example, a post-arrest<br/>17 statement --<br/>18 A. Uh-huh.<br/>19 Q. -- right?<br/>20 A. Right.<br/>21 Q. So in -- I don't -- I'm not sure we touched<br/>22 on this. But if -- if -- I think we did -- that the<br/>23 defendant has a right to a suppression hearing to have<br/>24 the court evaluate whether his post-arrest statements<br/>25 were coerced; right?</p> |

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| <p style="text-align: right;">Page 194</p> <p>1 A. I didn't really examine the accuracy of his<br/>2 reports, definitely not in a resolution of translation<br/>3 or dates or things of that sort.</p> <p>4 Q. Do you believe, to a reasonable degree of<br/>5 certainty, that Nasser Jamal Mussa Shwaysh is actually<br/>6 innocent?</p> <p>7 A. I cannot answer that question.</p> <p>8 Q. And let me just ask you the same question<br/>9 of Abd-el Karim Ratheb Younis Aweis.</p> <p>10 Do you believe, to a reasonable degree of<br/>11 certainty, that Abd-el Karim Ratheb Younis Aweis is<br/>12 actually innocent?</p> <p>13 A. I cannot answer that question. And, also,<br/>14 it was not my mandate.</p> <p>15 Q. When you say you can't answer that question,<br/>16 what do you mean by that?</p> <p>17 A. I mean that, as a lawyer, as a -- someone<br/>18 that wants to be a serious lawyer, I cannot make<br/>19 judgment calls based on partial -- a very small part<br/>20 of the information in -- in those cases.</p> <p>21 Q. So do you think it's a tip-off as to guilt<br/>22 or innocence that Abd-el Karim Ratheb Younis Aweis<br/>23 said "the acts I did I am proud of them and there<br/>24 is justification for what I did"?</p> <p>25 MR. HILL: Objection. Lack of foundation.</p>   | <p style="text-align: right;">Page 196</p> <p>1 his innocence?</p> <p>2 A. Did I have a client that maintained his<br/>3 innocence? I had.</p> <p>4 Q. And do clients -- in your experience, do<br/>5 clients who maintain their innocence, immediately<br/>6 before they're being sentenced, tell the court that<br/>7 they're proud of what they did and they'd kill more<br/>8 people if they could?</p> <p>9 A. It happens only in -- in security related<br/>10 cases.</p> <p>11 Q. You've had such a client?</p> <p>12 A. I don't recall that I had a client that<br/>13 said that. But I recall many cases of that sort. Yes.</p> <p>14 Q. Where clients maintained their innocence<br/>15 and said that they're proud that they killed Jews?</p> <p>16 A. Maintained their innocence in the sense<br/>17 that -- instructed their attorneys to -- to present<br/>18 a defense and to try to acquit them. And when they<br/>19 are convicted, then they say things that might be<br/>20 because these are -- this is the truth and it might<br/>21 be because they want to be -- get some respect among<br/>22 whatever community that thinks these kind of things<br/>23 are -- are a matter to be proud of.</p> <p>24 Q. In the parole system in Israel, does the<br/>25 acceptance of responsibility and the acknowledgment</p> |
| <p style="text-align: right;">Page 195</p> <p>1 Q. BY MR. YALOWITZ: Do you think that that's<br/>2 a tip-off that he's actually guilty?</p> <p>3 A. Well, as a defense lawyer, it actually<br/>4 raises my suspicion whether -- if he's so proud, maybe<br/>5 he enlarges his role in those -- in those charges. But<br/>6 it's not a tip-off not to this, nor -- nor to the other.</p> <p>7 Q. In your view, when a man says, immediately<br/>8 before his sentence, that he's proud of the acts, that<br/>9 that doesn't give you any evidence as to whether he's<br/>10 innocent or guilty?</p> <p>11 A. No.</p> <p>12 Q. Do you think that that's one of those things<br/>13 where you're in sort of the small minority?</p> <p>14 A. No. I think that serious defense attorneys --<br/>15 I'm in a large majority. I think that especially in --<br/>16 in cases where there is institutional due process<br/>17 issues, there are many things that drive people to<br/>18 admit to things they didn't do. And I didn't -- and<br/>19 I'm not suggesting that any of those didn't do what<br/>20 they were convicted of. I'm just saying that their --<br/>21 their guilty pleas, their admissions out of court and<br/>22 especially their pride, when they express such pride,<br/>23 may be motivated by many things that are not necessarily<br/>24 the truth.</p> <p>25 Q. Have you ever had a client who maintained</p> | <p style="text-align: right;">Page 197</p> <p>1 of remorse play a role in whether parole will be<br/>2 granted?</p> <p>3 A. A very significant role.</p> <p>4 Q. And so a defendant who is actually innocent<br/>5 and wishes parole is in a tough spot?</p> <p>6 A. Very, very tough spot. I had -- I had such<br/>7 cases.</p> <p>8 Q. And in the cases that you've had in that<br/>9 situation, did your clients say "I'm proud of what<br/>10 I did"?</p> <p>11 A. In the parole board?</p> <p>12 Q. Yes.</p> <p>13 A. Look, someone that goes to the parole board<br/>14 wants to get something. So he wouldn't say that he's<br/>15 proud.</p> <p>16 Q. Why don't we -- why don't we move to the<br/>17 case of Kahira Sa'id Ali Sa'adi.</p> <p>18 A. Yeah.</p> <p>19 Q. Ali Sa'adi. Do you have her file?</p> <p>20 A. No. 4. Yeah.</p> <p>21 Q. She's the fourth one on the list.</p> <p>22 A. Yeah.</p> <p>23 Q. And before we go to her specifically, I've --<br/>24 I've asked you a number of times about actual innocence.<br/>25 And I think I've asked it before, but let me just make</p>   |